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THE POWER OF THE PURSE: REASSERTING CONGRESS' AUTHORITY AND PROTECTING OUR DEMOCRACY THROUGH THE CONGRESSIONAL POWER OF THE PURSE ACT

House Committee on the
BUDGET
Chairman John Yarmuth



This document has not been reviewed and approved by the Democratic Caucus of the Budget Committee and may not necessarily reflect the views of all members.



Over the years, Congress' ability to exercise its constitutional power of the purse has been increasingly challenged by an Executive Branch that, regardless of party, has sought to claim control of the nation's purse for itself. To protect our democracy and our Constitution's separation of powers, Chairman John Yarmuth introduced the Congressional Power of the Purse Act (CPPA) in the 116th Congress. The legislation reasserts Congress' constitutional power of the purse by increasing transparency, demanding accountability, and strengthening checks and balances.

During the hearing, "Protecting our Democracy: Reasserting Congress' Power of the Purse," the House Budget Committee heard testimony from expert witnesses on the critical importance of congressional control over federal spending and how the CPPA reasserts Congress' power of the purse. Committee members from both sides of the aisle and the expert panelists underscored the need for Congress to exercise its constitutional prerogatives and discussed ways it might do so.

FAILURES OF THE EXISTING STATUTES THROUGH WHICH CONGRESS CONTROLS SPENDING

When the Framers first established the constitutional balance of powers between the three branches of government, they unequivocally charged Congress with the power of the purse. The Project on Government Oversight's Director of Public Policy, Liz Hempowicz, emphasized that "[t]here is nothing coequal about the power of the purse. That power lies with Congress. To whatever extent Congress has decided to assign some technical aspects of that power to the executive branch, Congress clearly and unambiguously possesses the authority to take back that power or place parameters on that power."

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Despite cornerstone fiscal laws like the Antideficiency Act (ADA) and the Impoundment Control Act (ICA), created in response to the Executive Branch's misuse of its delegated spending responsibilities, the Brookings



Institution's Senior Fellow, Molly Reynolds, explained that “[t]he expansion of Executive power that began after September 11th has not been met with a similar assertion of congressional authority.”

Executive overreach transcends Presidents, parties, or politics —
Witnesses described how both Republican and Democratic administrations have infringed on Congress’ prerogatives by spending congressionally appropriated funds for unauthorized purposes or refusing to spend funds at all. As Mrs. Hempowicz explained: “The power of the purse is the most necessary and potent tool in Congress’s arsenal. For decades and across administrations and congresses controlled by both parties, Congress has slowly but surely relinquished that power to the executive branch.” Chairman Yarmuth added that “Presidents and agencies of both parties have pushed the boundaries of their delegated spending powers.”

The U.S. Government Accountability Office’s (GAO) Deputy General Counsel, Edda Emmanuelli Perez, described GAO’s conclusion that the Executive Branch may not use the ICA to effectively create an unreviewable “pocket rescission” by withholding funds until they can no longer be used. According to Ms. Emmanuelli Perez, “[i]nterpreting the Impoundment





Control Act as authorizing the President to unilaterally cancel budget authority would bestow powers upon the President beyond those the Constitution contemplates and would deny Congress its constitutionally prescribed role in the enactment of law.”

Members of the Committee also focused on how the Executive Branch’s influence over spending affects their constituents on a daily basis. Rep. Chu explained how the Executive Branch’s overreach on Congress’ power of the purse “put the lives of Californians struggling to fight off a pandemic in danger.” And Del. Plaskett highlighted how funding delays may impede disaster recovery efforts. More broadly, she also described how decades of Executive Branch infringement on Congress’ constitutional spending power “represents a shift in power away from our constituents, who have elected us, and, therefore, a weakening of their voices in important decisions regarding funding allocations.”

The Executive Branch’s expansive use of national emergency authority — When Congress granted the President authority to declare a national emergency, it included procedures to expedite Congress’ review of the declaration. Later, the Supreme Court held such procedures unconstitutional. Without those procedures, Congress effectively needs a two-thirds majority in both houses of Congress to override a President’s national emergency declaration. The original bargain Congress made no longer exists and, as such, Dr. Reynolds explained that “Congress would be well-served to adapt its procedures in response.”

Executive Branch secrecy impedes Congress’ oversight of spending — Witnesses explained how the secrecy of many Executive Branch spending decisions prevents Congress from fulfilling its constitutional functions and conducting proper oversight.

For example, Mrs. Hempowicz described the apportionment process and the issues that arise when apportionments are kept secret. An apportionment is a legally binding, OMB-issued plan to use budgetary resources along set timelines, and the overarching purpose of the apportionment process is to ensure agencies use appropriations at a pace that prevents deficiencies or a need for supplemental funding.

Mrs. Hempowicz testified that there are clear limits to the apportionment



process and that “transparency is critical to ensure that the executive is not abusing it.” She described how the current lack of transparency “make[s] it harder for Congress to conduct oversight [and] makes it difficult for the public to have faith that taxpayer resources are being handled with integrity and in a manner consistent with the intent of Congress.” Ms. Emmanuelli Perez, explained how the public availability of apportionments would provide the nonpartisan GAO the “opportunity to give [Congress] more timely advice [and] to give [Congress] timely decisions in other work that [GAO] do[es].” The lack of transparency extends beyond apportionments. There is currently no requirement for the Executive Branch to publicly disclose formal budget and appropriations law opinions issued by the Office of Legal Counsel (OLC) even though, as Mrs. Hempowicz described, the Executive Branch “has a long history of expansively interpreting the authorities granted to it by Congress” and OLC’s legal interpretations “have serious ramifications on the balance of power when it comes to matters related to the power of the purse.”

Further, the Executive Branch has not been forthcoming with other information related to its use of funds. Ms. Emmanuelli Perez described how some agencies have stonewalled GAO investigations into possible violations of fiscal laws by not providing timely, or by not providing any, response to GAO requests for information. And even though the Biden Administration—in response to a [letter](#) from Chairman Yarmuth—[reinstated](#) formal guidance



for executive agencies to notify Congress of any ADA violations found by GAO, Chairman Yarmuth pointed out that this requirement remains uncoded and “unbelievably absent from current law.”

THE CPPA REASSERTS CONGRESS’ POWER OF THE PURSE

Witnesses identified concrete ways that provisions of the CPPA reassert Congress’ constitutional power of the purse.

The CPPA reasserts congressional oversight — Witnesses underscored the importance of transparency in enhancing Congress’ ability to effectively conduct oversight and the CPPA’s role in ensuring such transparency. Dr. Reynolds maintained that “the need for monitoring and oversight tools is structural and fundamental to the Constitutional system” and explained how the CPPA aims to “strengthen [Congress]’ hand as it seeks information from the Executive Branch.” Ms. Emmanuelli Perez stated that “[r]equiring timely responses to GAO promotes greater transparency and accountability and, as Congress relies on the information GAO provides, will enhance congressional oversight of Executive Branch activities” and described how the CPPA provisions that require agencies to publish apportionments and report other budgetary information would give GAO “the ability to look at what is occurring . . . with . . . th[e] lifespan of the appropriations as Congress has set out.” She also added that enshrining in law the Administration’s return to the longstanding practice of requiring agencies to notify Congress of any GAO findings of ADA violations would ensure that Congress has access to essential oversight information.

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The CPPA prevents abuses of the National Emergencies Act and the ICA — Dr. Reynolds explained how “one of the most powerful pieces of the [CPPA] is the part that would shift the current mechanism for congressional review of national emergencies declarations.” By requiring Congress to affirmatively approve a national emergency declaration, the CPPA permits meaningful review by Congress and reclaims Congress’ power of the purse.

Ms. Emmanuelli Perez recommended amending the ICA to expressly prevent “pocket rescissions,” which, in her view, would otherwise “upset the delicate balance of powers provided for in the Constitution.” The CPPA clarifies the ICA by explicitly prohibiting this type of Executive Branch overreach.



CPPA's apportionment transparency provisions help reassert Congress' power of the purse — Witnesses described how the increased apportionment transparency in the CPPA sheds light on Executive Branch spending. Dr. Reynolds explained that “there can be divergence between what Congress asks for and what the Executive Branch does for reasons from nefarious to routine, and you need good information to be able to figure out all of those things because, again, the potential here for gaps is inevitable.”

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By requiring the public disclosure of apportionments, the CPPA demands transparency and brings accountability to the opaque, currently unchecked exercise of the Executive Branch's duty to apportion appropriations. For instance, Ms. Emmanuelli Perez explained in her written testimony how the public availability of apportionments “would substantially expedite GAO's inquiries. Moreover, publicly available apportionments would greatly increase visibility into OMB's use of its apportionment authority, enhancing Congress's ability to conduct oversight of OMB's operations.” Mrs. Hempowicz also discussed the benefits of requiring that these documents be posted publicly. Addressing Ranking Member Smith, Mrs. Hempowicz explained that “if the Congressional Power of the Purse Act was law, [Ranking Member Smith] would already have many of the answers to the questions [he] recently asked the Biden Administration about how appropriated funds are being used.”

THE CPPA IS A BIPARTISAN, CONGRESSIONAL SOLUTION TO A BIPARTISAN, EXECUTIVE BRANCH PROBLEM

The significance of Congress' power of the purse is an institutional issue, and Members on both sides of the aisle emphasized the importance of Congress reclaiming this role. Rep. Boyle said, “it is crucial that Congress again reassert its role in holding the power of the purse.” Likewise, Rep. Hinson stated that “it's incredibly important that Congress does reassert its control over the power of the purse.”

Members of the Power of the Purse Coalition, a diverse group of good government organizations across the ideological spectrum, wrote a [letter](#) in support of the CPPA. They stated that the CPPA “would go a long way toward



restoring the proper balance between Congress and the executive branch. Recalibrating the growing imbalance is crucial in moving toward a more accountable and transparent federal government that acts responsibly with the American people's hard-earned tax dollars and in addressing the public's persistent concern about government corruption."

CONCLUSION

Congress has the sole constitutional authority over the power of the purse and, as Ms. Emmanuelli Perez explained, "[i]t is imperative that Congress's power of the purse and oversight role are respected, upheld, and sustained in order to ensure accountability in the spending of public money." As Congress confronts decades of purposeful infringement on its singular role by an emboldened Executive Branch, Congress can no longer rely on interbranch comity and non-binding norms. In Chairman Yarmuth's words: "[a] commitment to good government cannot ebb and flow depending on who controls the levers of power."

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By transforming historical practices into statutory mandates, enhancing requirements under existing law, and shedding light on Executive Branch spending decisions, the CPPA strengthens Congress' oversight of executive spending activity and allows Congress to reclaim its constitutional role.